

**Senate File 79 - Introduced**

SENATE FILE 79

BY KIBBIE

**A BILL FOR**

1 An Act relating to assignment of visitation or joint physical  
2 care parenting time for children of military service members  
3 on active duty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41D, Code 2011, is amended to read  
2 as follows:

3 **598.41D Assignment of visitation or joint physical care —**  
4 **parent serving active duty — family member.**

5 1. Notwithstanding any provision to the contrary, a parent  
6 who has been granted court-ordered visitation with the parent's  
7 minor child may file an application for modification of a  
8 decree or a petition for modification of an order regarding  
9 child visitation, prior to or during the time the parent is  
10 serving active duty in the military service of the United  
11 States, to temporarily assign that parent's visitation rights  
12 to a family member of the minor child, as specified by the  
13 parent. The application or petition shall be accompanied by an  
14 affidavit from the family member indicating the family member's  
15 knowledge of the application or petition and willingness to  
16 exercise the parent's visitation rights during the parent's  
17 absence. The application or petition shall also request  
18 any change in the visitation schedule necessitated by the  
19 assignment.

20 2. Notwithstanding any provision to the contrary, a parent  
21 who has been granted court-ordered joint physical care of the  
22 parent's minor child may file an application for modification  
23 of a decree or a petition for modification of an order  
24 regarding child custody, prior to or during the time the parent  
25 is serving active duty in the military service of the United  
26 States, to temporarily assign the parent's joint physical  
27 care parenting time to a family member of the minor child, as  
28 specified by the parent. The application or petition shall be  
29 accompanied by an affidavit from the family member indicating  
30 the family member's knowledge of the application or petition  
31 and willingness to exercise the parent's joint physical care  
32 parenting time during the parent's absence. The application or  
33 petition shall also request any change in the joint physical  
34 care parenting time schedule necessitated by the assignment.

35 ~~2.~~ 3. a. If the active duty of a parent affects the

1 parent's ability or anticipated ability to appear at a  
2 regularly scheduled hearing, the court shall provide for an  
3 expedited hearing in matters instituted under this section.

4 *b.* If the active duty or anticipated active duty of a parent  
5 prevents the parent from appearing in person at a hearing, the  
6 court shall provide, upon reasonable advance notice, for the  
7 parent to present testimony and evidence by electronic means  
8 in matters instituted under this section. For the purposes of  
9 this paragraph, "*electronic means*" includes communication by  
10 telephone, video teleconference, or the internet.

11 ~~3.~~ 4. *a.* The court may grant the parent's request for  
12 temporary assignment of visitation or joint physical care  
13 parenting time and any change in the visitation or joint  
14 physical care parenting time schedule requested if the court  
15 finds that such assignment of visitation or joint physical care  
16 parenting time is in the best interest of the child.

17 *b.* In determining the best interest of the child, the court  
18 shall ensure all of the following:

19 (1) That the specified family member is not a sex offender  
20 as defined in section 692A.101.

21 ~~(2) That the specified family member does not have a history~~  
22 ~~of domestic abuse, as defined in section 236.2. In determining~~  
23 ~~whether a history of domestic abuse exists, the court's~~  
24 ~~consideration shall include but is not limited to commencement~~  
25 ~~of an action pursuant to section 236.3, the issuance of a~~  
26 ~~protective order against the individual or the issuance of a~~  
27 ~~court order or consent agreement pursuant to section 236.5,~~  
28 ~~the issuance of an emergency order pursuant to section 236.6,~~  
29 ~~the holding of an individual in contempt pursuant to section~~  
30 ~~664A.7, the response of a peace officer to the scene of~~  
31 ~~alleged domestic abuse or the arrest of an individual following~~  
32 ~~response to a report of alleged domestic abuse, or a conviction~~  
33 ~~for domestic abuse assault pursuant to section 708.2A.~~

34 ~~(3) That the specified family member does not have a record~~  
35 ~~of founded child or dependent adult abuse.~~

1     ~~(4)~~ (2) That the specified family member has an established  
2 relationship with the child and assigning visitation or joint  
3 physical care parenting time to the specified family member  
4 will provide the child the opportunity to maintain an ongoing  
5 family relationship that is important to the child.

6     ~~(5)~~ (3) That the specified family member is able to  
7 personally and financially support the child and will support  
8 the child's relationship with both of the child's parents  
9 during the assigned visitation or joint physical care parenting  
10 time.

11     c. In determining the best interest of the child, the court  
12 shall consider:

13     (1) Whether the specified family member has a history of  
14 domestic abuse, as defined in section 236.2. In determining  
15 whether a history of domestic abuse exists, the court's  
16 consideration shall include but is not limited to commencement  
17 of an action pursuant to section 236.3, the issuance of a  
18 protective order against the individual or the issuance of a  
19 court order or consent agreement pursuant to section 236.5,  
20 the issuance of an emergency order pursuant to section 236.6,  
21 the holding of an individual in contempt pursuant to section  
22 664A.7, the response of a peace officer to the scene of  
23 alleged domestic abuse or the arrest of an individual following  
24 response to a report of alleged domestic abuse, or a conviction  
25 for domestic abuse assault pursuant to section 708.2A.

26     (2) Whether the specified family member has a record of  
27 founded child or dependent adult abuse.

28     ~~4.~~ 5. An order granting assignment of visitation ~~rights~~  
29 or joint physical care parenting time under this section does  
30 not create separate rights to visitation or joint physical care  
31 parenting time for a person other than the parent.

32     6. An order granted under this section may temporarily  
33 assign visitation or joint physical care parenting time that  
34 is equal to or less than the visitation or joint physical care  
35 parenting time awarded to the parent whose visitation or joint

1 physical care parenting time is assigned.

2 5. 7. The parent whose visitation ~~rights are~~ or joint  
3 physical care parenting time is temporarily assigned shall  
4 provide a copy of the order granting assignment of visitation  
5 or joint physical care parenting time to the school and school  
6 district of the child to whom the order applies.

7 6. 8. An order granting temporary assignment of visitation  
8 ~~rights~~ or joint physical care parenting time pursuant to this  
9 section shall terminate upon notification of the court by the  
10 parent or automatically upon the parent's completion of active  
11 duty, whichever occurs first.

12 7. 9. After a parent completes active duty, if an  
13 application for modification of a decree or a petition for  
14 modification of an order is filed, the parent's absence due to  
15 active duty or the assignment of visitation ~~rights~~ or joint  
16 physical care parenting time does not constitute a substantial  
17 change in circumstances, and the court shall not consider a  
18 parent's absence due to that active duty or the assignment  
19 of visitation ~~rights~~ or joint physical care parenting time  
20 in making a determination regarding the best interest of the  
21 child relative to such an application or petition filed after a  
22 parent completes active duty.

23 8. 10. As used in this section, "*active duty*" means active  
24 military duty pursuant to orders issued under Tit. X of the  
25 United States Code. However, this section shall not apply to  
26 active guard and reserve duty or similar full-time military  
27 duty performed by a parent when the child remains in actual  
28 custody of the parent.

29

EXPLANATION

30 This bill relates to custody-related issues of children of  
31 active duty military personnel. The bill provides that in  
32 addition to assignment of court-ordered visitation, a parent  
33 who will be or is serving active duty in the military service  
34 of the United States may petition to have joint physical  
35 care parenting time assigned to a family member of the minor

1 child as specified by the parent. As with the assignment of  
2 visitation, the court must determine that the assignment of  
3 joint physical care parenting time is in the best interest of  
4 the child. The bill also amends the best interest of the child  
5 determination by the court to provide that in determining the  
6 best interest of the child in addition to factors the court is  
7 to ensure, the bill includes that the specified family member  
8 will support the child's relationship with both of the child's  
9 parents during the assigned visitation or joint physical care  
10 parenting time. However, the bill amends the current factors  
11 that the court is to ensure and instead requires that the court  
12 consider whether the specified family member has a history of  
13 domestic abuse and whether the specified family member has a  
14 record of founded child or dependent abuse.

15 The bill also provides that an order granted under the  
16 bill may temporarily assign visitation or joint physical care  
17 parenting time that is equal to or less than the visitation or  
18 joint physical care parenting time awarded to the parent.